

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

EXXON MOBIL CORPORATION,)	
)	
Plaintiff,)	
)	Civil Action No. 4:13-cv-02906
v.)	
)	
FX NETWORKS, LLC, TWENTIETH)	
CENTURY FOX FILM)	
CORPORATION, TWENTY-FIRST)	
CENTURY FOX, INC., and FXX)	
NETWORK, LLC)	
)	
Defendants.)	

AGREED MOTION TO AMEND SCHEDULING ORDER

Plaintiff Exxon Mobil Corporation and Defendants FX Networks, LLC, Twentieth Century Fox Film Corporation, Twenty-First Century Fox, Inc., and FXX Network, LLC (collectively, the “Parties”) file this Agreed Motion to Amend Scheduling Order, and respectfully show the Court as follows:

1. On October 2, 2013, Plaintiff commenced this suit by filing its Complaint, asserting seven claims against Defendants: infringement of registered marks; violation of section 43(a) of the Lanham Act; federal trademark dilution; common law unfair competition; dilution under Texas law; unjust enrichment; and refusal of registration.

2. On December 12, 2013, Plaintiff filed an Amended Complaint, adding FXX Network, LLC as a named defendant.

3. On December 26, 2013, Defendants filed a motion to dismiss Count V of Plaintiff's Amended Complaint pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. After full briefing, the Court denied Defendants' motion on August 18, 2014.

4. On March 31, 2014, the Court held its Rule 16 Scheduling Conference with the Parties and thereafter entered the Scheduling Order currently governing this case.¹

5. Soon thereafter, and while Defendants' motion to dismiss remained pending, the Parties began their discovery efforts and have since been working together in a diligent manner to conduct discovery to meet the deadlines outlined in the Court's Rule 16 Scheduling Order. The Parties' document productions, however, have been voluminous, which has required an extensive amount of time for review and analysis. To date, Plaintiff has produced approximately 309,000 pages of documents, and Defendants have produced approximately 90,000 pages of documents. The Parties' discovery efforts also include depositions of, and document productions from, third parties, further increasing the amount of time necessary to conclude discovery.

¹ See Dkt. No. 42.

6. As of late November 2014, the Parties believe in good faith that they have substantially completed their respective document productions. While the Parties continue to review these documents diligently, they believe that, given the voluminous amount of information exchanged thus far, additional time is required to complete discovery and prepare the case for trial, including time to conduct fact and expert witness depositions, file dispositive motions, and address other pre-trial matters.

7. Based upon the foregoing, the Parties request a 60-day extension of time through and including the current motion cut-off date. **This extension will not affect the current Joint Pretrial Order deadline or the September/October Trial Term.**

8. Accordingly, the Parties request that the Court's Rule 16 Scheduling Order (Docket No. 42) be amended as follows:

- a. The party bearing the burden of proof on an issue shall designate expert witnesses and serve expert reports by April 14, 2015.²
- b. The party not bearing the burden of proof on an issue shall designate expert witnesses and serve rebuttal expert reports by May 12, 2015.³

² The party bearing the burden of proof on an issue currently is scheduled to designate expert witnesses and serve expert reports by February 13, 2015. *See* Dkt. No 42.

³ The party not bearing the burden of proof on an issue currently is scheduled to designate expert witnesses and serve rebuttal expert reports by March 13, 2015. *See id.*

- c. Fact discovery shall be completed by March 17, 2015.⁴
- d. Expert discovery shall be completed by June 16, 2015.⁵
- e. The motion cut-off date shall be July 14, 2015.⁶

9. The Parties seek this extension in the interest of justice and not for the purpose of unreasonable delay.

10. The Parties' proposed Amended Scheduling Order is attached hereto.

WHEREFORE, PREMISES CONSIDERED, the Parties pray that the Court grant this Agreed Motion to Amend Scheduling Order, extending the deadlines as requested herein, and pray for such other and further relief to which the Parties may justly be entitled.

[Signatures on following pages]

⁴ Fact discovery currently is scheduled to be completed by January 16, 2015. *See id.*

⁵ Expert discovery currently is scheduled to be completed by April 17, 2015. *See id.*

⁶ The motion cut-off date currently is scheduled for May 15, 2015. *See id.*

Agreed and respectfully submitted this 11th day of December 2014:

s/ William H. Brewster

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CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing document was filed electronically using the CM/ECF system on December 11, 2014, which will automatically notify and effect service on all attorneys of record, who are deemed to have consented to electronic service via the Court's CM/ECF system, per LR 5.3.

s/ William H. Brewster
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